

McGuire died in 2011 or 2012

2 St. Peter's Path
House 26
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8th December, 1991

Frank McGuire
ROBIN THOMPSON & PARTNERS
285 Bath Street
Glasgow G2 4HQ

Dear Mr McGuire,

Thanks for your letter dated 4th December, 1991. As you say, the matter is not straightforward and I would appreciate clarification on certain points. I confess that in places I find it difficult to grasp the gist of the argument you present and for this reason am obliged to go through the points as I find them. I regret the inconvenience but please bear with me.

You say in the first paragraph that we can now "enter for judgment immediately against Manotonello Ltd. and at the same time continue with the action against Newalls. We can proceed against either or both of these two Defenders." Unfortunately the sense of your opening sentence to the second paragraph then eludes me - I think because of the terms 'both' 'and' 'also' 'alternatively' coming in such rapid proximity - and I remain unsure about what my position here actually amounts to.

You do clarify the position on the "one-off lump sum"; I now understand that by accepting this "higher sum" I also forfeit "the right to go back to the Court for further compensation" should my "health deteriorate in the future due to (my) exposure to asbestos". From this I assume that the "one-off lump sum" would be "higher" than what I might expect in the form of a successful claim for provisional damages. But not - or not necessarily - higher than a successful claim for provisional damages plus any further compensation that I may successfully claim at a future date. I note that you regard the risk to my future health as "small" which I must say gives me some confidence; I was led to believe by the medical evidence that no improvement would occur in my condition, that therefore I should perhaps prepare for deterioration (I have only one lung and the other is contaminated).

I understand that we may "enter for judgment straightaway against Manotonello Ltd. on the grounds that they have not submitted a Defence" and we may perhaps succeed in "recover[ing] a "one-off payment". But that "we cannot obtain provisional damages against Manotonello Ltd. in this way". Does this mean if we decide to wait a bit and not seek "judgment straightaway" that their Defence can arrive at some future point when we might proceed to claim provisional damages? Is there a time-bar on when a Defence must be offered in these circumstances? Or is it possible to assume - or indeed to hope - that since this company offers no Defence, that they have no Defence? I further understand that "if we seek a one-off lump sum from Manotonello Ltd. then we also have to do the same with Newalls"; I would

appreciate a clarification on this point.

Newalls Insulation Co. Ltd. offers a Defence against our claim; but may not be insured, in which case "we cannot recover provisional damages". Does this imply, if they are not insured, that there is no hope of a "one-off lump sum 'to buy off' the risk of any further deterioration in (my) health"? I.e. if we press on with our claim, and Newalls prove not to be insured, does this mean any "one-off lump sum" we do recover will not be judged on potential provisional damages plus potential further compensation? If so I would appreciate a clarification of the grounds upon which Newalls Insulation Co. Ltd. would feel obliged to offer me a "one-off final payment" and the burden of responsibility they could assume in regard to my physical condition that they might consider theirs in that circumstance.

Can we "establish the insurance position regarding Newalls" by asking them directly, or must we discover this by indirect methods? And, if the latter, can this be done in such a way as to expedite our decision as to how we should proceed?

At the top of page 2 you state that "Basically what this all means is that we can definitely only seek to recover a one-off final payment from Manotonello Ltd. (and) we cannot recover provisional damages from them." Does this mean any "one-off final payment" we do recover from Manotonello Ltd. will not be judged on potential provisional damages plus potential further compensation? Or does it mean something else? And is this 'final payment' that "we can definitely only seek to recover" contingent upon the judgment being entered immediately? Or not?

You state that my "choice is therefore either to try and preserve (my) right to provisional damages against Newalls and drop the claim against Manotonello Ltd.", in which case, given you "suspect (Newalls) are not insured", I have no hope of recovering provisional damages and am therefore - as far as I understand you correctly - guaranteed absolutely nothing at all: or else I should "proceed against Manotonello Ltd. and Newalls for a one-off lump sum payment" which - again as far I understand you - may not take into consideration the full implications of why I am claiming provisional damages in the first place, viz that my symptoms disclose an asbestos-related disease (progressive) and is a direct effect of my exposure to asbestos while employed respectively by Newalls Insulation Co. Ltd. and McEwans Insulators (Manotonello Ltd.).

I am aware that my understanding of the argument may be in error and for this reason, rather than discuss matters by telephone, would prefer your written clarification on the points listed above. In light of my failing health it is of course imperative that I arrive swiftly at a decision as to how best we proceed. I therefore ask that you respond at your earliest convenience.

Yours sincerely,

John R. Gilchrist.